

### DETAILED ACTION

This communication is a First Action Non-Final on the merits. Preliminary Amendment filed March 08, 2006 has been acknowledged. Claim 8 has been canceled. Claims 1-7 are currently pending and have been considered below.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**As per Claim 4**, the claim provides the limitation "stating at least one argument" in the alternative form as "or" but fails to provide an alternative, but rather restates the limitation stated earlier which is "stating at least one argument why each treatment actually rendered did not meet the applicable standard of care, and providing citations from medical literature for all arguments". Therefore, it is unclear what alternative is being claimed. For examination purposes, Examiner construes the claim to mean "stating at least one argument why each treatment actually rendered **did** meet the applicable standard of care....or stating at least one argument why each treatment actually rendered **did not** meet the applicable standard of care".

**As per Claim 5**, the claim provides two limitations that are identical rather than stating one limitation. Therefore, it is unclear as to what is being claimed. For

examination purposes, Examiner construes the claim to mean “stating at least one argument why each treatment actually rendered **did** meet the applicable standard of care.....and stating at least one argument why each treatment actually rendered **did not** meet the applicable standard of care.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al. (5,862,223).

Walker et al. discloses a double blind evaluation method for eliminating actual and potential bias from a malpractice claim evaluation process a malpractice claim (a method of providing anonymity when requesting and providing an expert opinion (Col. 20, Lines 50-65) in regards to medical malpractice), comprising the steps of:

retention by an entity having a direct or indirect interest in the claim of a neutral third party to obtain an independent evaluation of the claim (Col. 7, Lines 6-29, discloses retention of a neutral third party via a person accessing an online Exchange (i.e. neutral third party) to obtain an independent expert opinion);

acquisition by the third party of facts relating to the claim which are sufficient to permit an independent objective evaluation of the claim (Col. 7, Lines 6-29, discloses

the online Exchange acquiring a full description of the job to be performed and any other information necessary to respond to the expert request submitted by the user to be given to the expert for evaluation);

retention by the third party of a qualified independent expert to perform the claim evaluation (Col. 21, Lines 27-36, discloses a retention of an expert by the online Exchange submitting a request to an expert and the expert accepting the request by submitting an acceptance message to the central controller);

redaction by the third party from the sufficient facts of all facts which would permit the expert to identify any party involved or having an interest in the claim (Col. 9, Lines 66 and 67; Col. 10, Lines 1-7, via the online Exchange providing full anonymity by concealing the identity of persons involved where Col. 7, Lines 6-29, information necessary to respond to an expert request is submitted to the expert);

submission by the third party of the sufficient facts after redaction to the expert in order to permit the expert to make an independent objective evaluation of the claim (Col. 21, Lines 12-26, discloses the online Exchange submitting an expert request to the qualifying expert where (Col. 7, Lines 6-29) the expert request includes a full description of the job to be performed and any other information necessary to respond to the expert request);

preparation by the expert of a written independent objective evaluation of the claim (Col. 21, Lines 37-61, discloses an expert preparing a written independent evaluation via developing an expert answer in response to the request);

submission of the written claim evaluation by the expert to the third party (Col. 21, Lines 37-61, discloses the expert submitting an expert answer to the online Exchange);

redaction by the third party from the written claim evaluation of any information which would permit identification of the expert (Col. 9, Lines 66 and 67; Col. 10, Lines 1-7, via the online Exchange providing full anonymity by providing no information about the expert); and

submission of the redacted evaluation to the entity retaining the third party (Col. 21, Lines 37-61, discloses submitting the expert answer to the entity retaining the third party (i.e. online Exchange)).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (5,862,223) in view of *Medical Experts & Establish Standards of Care in Malpractice Cases* (November 21, 2000).

**As per Claim 2**, Walker et al. discloses the claimed invention as applied to Claim 1, above. However, Walker et al. fails to explicitly disclose acquiring a plurality of the following: facts and documents that relate to the claim; background information about

the party asserting the claim; background information about the party against whom the claim is asserted; and facts about the party's peer group in the same geographic area.

*Medical Experts & Establish Standards of Care in Malpractice Cases* discloses that an expert witness must assert familiarity with the treatment of patients with the plaintiff's complaint by physicians similarly situated to the defendant and that an expert witness may offer an opinion as to whether the defendant (i.e. physician) was qualified to treat the plaintiff's condition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to obtain facts and documents that relate to the claim and background information about the party asserting the claim (i.e. patient) and about the party against whom the claim is asserted (i.e. physician) in order for the expert to develop a conclusion as to whether based on the plaintiff's condition and the defendant's actions the defendant did not meet the standard of care and as to whether the defendant was qualified to treat the plaintiff.

Therefore, from the teaching of *Medical Experts & Establish Standards of Care in Malpractice Cases*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for managing communication between an expert and an end user seeking a solution to an expert request of Walker et al. to include acquiring a plurality of the following: facts and documents that relate to the claim; background information about the party asserting the claim; background information about the party against whom the claim is asserted; and facts about the party's peer group in the same geographic area as taught by *Medical Experts &*

*Establish Standards of Care in Malpractice Cases* in order to provide the expert with information that would enable the expert to provide an informed expert opinion.

**As per Claim 3**, Walker et al. discloses the claimed invention as applied to Claim 2, above. However, Walker et al. fails to explicitly disclose a plurality of the following types of information: resumes; at least one curriculum vitae; educational history; employment history; and professional training.

*Medical Experts & Establish Standards of Care in Malpractice Cases* discloses an expert witness offering an opinion as to whether the defendant (i.e. physician) was qualified to treat the plaintiff's condition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to obtain information about the defendant such as training, employment history, and education in order for the expert to determine based on the information provided whether the defendant was qualified to treat the plaintiff's condition.

Therefore, from the teaching of *Medical Experts & Establish Standards of Care in Malpractice Cases*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method for managing communication between an expert and an end user seeking a solution to an expert request of Walker et al. to include disclose a plurality of the following types of information: resumes; at least one curriculum vitae; educational history; employment history; and professional training in order to provide the expert with information that would enable the expert to provide an informed expert opinion.

7. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Liebig-Grigsby v. United States of America* (March 12, 2003) in view of *Medical Experts & Establish Standards of Care in Malpractice Cases* (November 21, 2000).

**As per Claim 4**, *Liebig-Grigsby v. United States of America* discloses the method for generating an independent evaluation by an expert of a medical malpractice claim asserted by a claimant, comprising the expert:

stating medical cause of claimant's condition (Page 4, discloses the expert Dr. Wilberger stating the medical cause of the Plaintiff's condition as cervical myelopathy);

stating whether there was any action/inaction by the claimant which can be attributed to or cited as the cause of current condition, listing by symptoms and/or cause (Pages 9 and 10, discloses the expert stating that due to the failure to refer the Plaintiff to a neurosurgeon and due to the neurosurgeon not ordering an MRI, the physicians deprived the Plaintiff of the opportunity for an intervention that could have stabilized or perhaps improved the Plaintiff's condition. As a result, the Plaintiff's condition deteriorated to the point where the Plaintiff is currently confined to a wheelchair); and

stating the identity each provider providing treatment to the claimant (Pages 9 and 10, discloses the expert Dr. Wilberger, identifying Dr. Garmon, and Dr. Orfei as the physicians who provided treatment to the Plaintiff) and, for each provider,

stating each symptom/cause treated by that provider and the treatment rendered to claimant (Pages 4-9, via the findings of fact disclosing the expert Dr. Wilberger stating the Plaintiff's medical conditions (i.e. symptom/cause) and (Pages 9-11) Dr.

Wilberger stating the treatment (or lack of treatment) that was provided by each physician (i.e. Dr. Orfei and Dr. Garmon)).

However, *Liebig-Grigsby v. United States of America* fails to explicitly disclose the expert providing citations from medical literature and stating at least one argument why each treatment actually rendered did or did not meet the applicable standard of care.

*Medical Experts & Establish Standards of Care in Malpractice Cases* discloses the requirements for an expert witness with the concept of the expert providing citations from medical literature (Page 1, via an expert witness opinion must be supported by uncontroverted scholarly literature); and the expert stating at least one argument why each treatment actually rendered did or did not meet the applicable standard of care, and providing citations from medical literature for all arguments (Page 1, via an expert witness establishing a standard for medical care and giving an opinion on whether the defendant's conduct did or did not meet this standard and supporting his opinion by uncontroverted scholarly literature).

Therefore, from the teaching of *Medical Experts & Establish Standards of Care in Malpractice Cases*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the medical malpractice case of *Liebig-Grigsby v. United States of America* to include the expert providing citations from medical literature and stating at least one argument why each treatment actually rendered did or did not meet the applicable standard of care as taught by *Medical Experts & Establish*



*Standards of Care in Malpractice Cases* in order to provide scientific support to the expert's opinion in determining whether a defendant violated the standard of care.

**As per Claim 5**, *Liebig-Grigsby v. United States of America* discloses the claimed invention as applied to Claim 4, above. However, *Liebig-Grigsby v. United States of America* fails to explicitly disclose the expert stating at least one argument why each treatment actually rendered did and did not meet the applicable standard of care and providing citations from medical literature for all arguments.

*Medical Experts & Establish Standards of Care in Malpractice Cases* discloses the requirements for an expert witness with the concept of the expert stating at least one argument why each treatment actually rendered did and did not meet the applicable standard of care, and providing citations from medical literature for all arguments (Page 1, via an expert witness establishing a standard for medical care and giving an opinion on whether the defendant's conduct did or did not meet this standard and supporting his opinion by uncontroverted scholarly literature). It would be obvious to one of ordinary skill in the art at the time of the invention to have an expert state when a treatment rendered met a standard of care and also state when a treatment rendered did not met a standard of care in order to provide a clear analysis as to what was the cause of the claimants injuries and to determine what specific actions should the defendant be held accountable for as a violation of the standard of care.

Therefore, from the teaching of *Medical Experts & Establish Standards of Care in Malpractice Cases*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the medical malpractice case of *Liebig-Grigsby*

*v. United States of America* to include the stating at least one argument why each treatment actually rendered did and did not meet the applicable standard of care and providing citations from medical literature for all arguments as taught by *Medical Experts & Establish Standards of Care in Malpractice Cases* in order to provide scientific support to the expert's opinion in determining whether a defendant violated the standard of care.

**As per Claims 6 and 7**, *Liebig-Grigsby v. United States of America* discloses the expert stating the treatment that the expert would have selected to be rendered to the claimant, given the claimant's symptom and/or cause (Page 9, discloses the expert Dr. Wilberger stating the he would have rendered a second surgery to the claimant based on the conditions of the claimant).

However, However, *Liebig-Grigsby v. United States of America* fails to explicitly disclose the expert providing citations from medical literature.

*Medical Experts & Establish Standards of Care in Malpractice Cases* discloses the requirements for an expert witness with the concept of the expert providing citations from medical literature (Page 1, via an expert witness opinion must be supported by uncontroverted scholarly literature).

Therefore, from the teaching of *Medical Experts & Establish Standards of Care in Malpractice Cases*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the medical malpractice case of *Liebig-Grigsby v. United States of America* to include the expert providing citations from medical literature as taught by *Medical Experts & Establish Standards of Care in Malpractice*

Cases in order to provide scientific support to the expert's opinion in determining whether a defendant violated the standard of care.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Goedken (US 2002/0133494) discloses a method for electronic information exchange.

Stephanou (6,505,166) discloses a method for providing expert referral over a network.

Koenig (7,167,855) discloses an internet-based matching service for expert consultants and customers with matching of qualifications and times of availability.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FONYA LONG whose telephone number is (571)270-5096. The examiner can normally be reached on Mon-Thur 7:30am-6:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3689

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FML

/Janice A. Mooneyham/

Supervisory Patent Examiner, Art Unit 3689